

AMENDED IN SENATE JUNE 6, 2007

AMENDED IN ASSEMBLY APRIL 26, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

AMENDED IN ASSEMBLY MARCH 29, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 949

Introduced by Assembly Member Krekorian

February 22, 2007

An act to amend Sections 1569.651, 1569.884, *and* 1569.886 of, and to add Section 1569.682 to, the Health and Safety Code, relating to long-term health care facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 949, as amended, Krekorian. Residential care facilities for the elderly: resident transfers.

Existing law provides for the licensure and regulation of residential care facilities for the elderly, as defined, by the State Department of Social Services, including, among other things, regulation of admissions procedures and agreements. Under existing law, a violation of any of these provisions is punishable as a misdemeanor.

This bill would require a licensed residential care facility for the elderly, prior to transferring a resident to another facility or to an independent living arrangement as a result of the forfeiture of a license, or a change in the use of the facility pursuant to an eviction by the department, to take all reasonable steps to transfer affected residents safely, and minimize possible trauma by taking specified actions relating to resident notification and transfer and relocation planning, as

prescribed. The bill would require a facility, if 7 or more residents of the facility will be transferred as a result of the forfeiture of a license or the change of *in the* use of a facility, to submit a proposed relocation plan for the affected residents to the department for review, and would require the department to approve or disapprove the plan. The bill would also require an admission agreement to include an explanation of the facility's relocation evaluation and plan, as provided, and a statement of the licensee's responsibilities and the resident's rights in the event of an eviction. *The bill would impose civil penalties of \$100 per day per violation.*

Existing law requires that if a licensee of a residential care facility for the elderly charges a preadmission fee in excess of \$500, it is refundable under certain conditions, as provided.

This bill *would* require that if a resident of a licensed residential care facility for the elderly is evicted, as provided, the resident is entitled to a refund of, *or credit for*, paid preadmission fees in excess of \$500, in accordance with specified conditions.

By changing the definition of related crimes, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1569.651 of the Health and Safety Code
- 2 is amended to read:
- 3 1569.651. (a) A licensee of a residential care facility for the
- 4 elderly shall not require any form of preadmission fee or deposit
- 5 from a recipient under the State Supplementary Program for the
- 6 Aged, Blind and Disabled (Article 5 (commencing with Section
- 7 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and
- 8 Institutions Code) who applies for admission to the facility.
- 9 (b) If a licensee charges a preadmission fee, the licensee shall
- 10 provide the applicant or his or her representative with a written
- 11 general statement describing all costs associated with the

1 preadmission fee charges and stating that the preadmission fee is
2 refundable. The statement shall describe the conditions for the
3 refund as specified in subdivision (g). A licensee shall only charge
4 a single preadmission fee as defined in subdivision (e) per resident
5 admission.

6 (c) A licensee of a residential care facility for the elderly shall
7 not require, request, or accept any funds from a resident or a
8 resident's representative that constitutes a deposit against any
9 possible damages by the resident.

10 (d) Any fee charged by a licensee of a residential care facility
11 for the elderly, whether prior to or after admission, shall be clearly
12 specified in the admission agreement.

13 (e) For the purposes of this section, "preadmission fee" means
14 an application fee, processing fee, admission fee, entrance fee,
15 community fee, or other fee, however designated, that is requested
16 or accepted by a licensee of a residential care facility for the elderly
17 prior to admission.

18 (f) This section shall not apply to licensees of residential care
19 facilities for the elderly that have obtained a certificate of authority
20 to offer continuing care contracts, as defined in paragraph (8) of
21 subdivision (c) of Section 1771.

22 (g) If the applicant decides not to enter the facility prior to the
23 facility's completion of a preadmission appraisal or if the facility
24 fails to provide full written disclosure of the preadmission fee
25 charges and refund conditions, the applicant or the applicant's
26 representative shall be entitled to a refund of 100 percent of the
27 preadmission fee.

28 (h) Unless subdivision (g) applies, preadmission fees in excess
29 of five hundred dollars (\$500) shall be refunded according to the
30 following:

31 (1) If the applicant does not enter the facility after a
32 preadmission appraisal is conducted, the applicant or the
33 applicant's representative shall be entitled to a refund of at least
34 80 percent of the preadmission fee amount in excess of five
35 hundred dollars (\$500).

36 (2) If the resident leaves the facility for any reason during the
37 first month of residency, the resident shall be entitled to a refund
38 of at least 80 percent of the preadmission fee amount in excess of
39 five hundred dollars (\$500).

(3) If the resident leaves the facility for any reason during the second month of residency, the resident shall be entitled to a refund of at least 60 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(4) If the resident leaves the facility for any reason during the third month of residency, the resident shall be entitled to a refund of at least 40 percent of the preadmission fee amount in excess of five hundred dollars (\$500).

(5) The facility may, but is not required to, make a refund of the preadmission fee for residents living in the facility for four or more months.

(i) (1) Notwithstanding subdivision (g), if a resident is evicted by a facility pursuant to subdivision (a) of Section 1569.682, the resident or the resident's legal representative shall be entitled to a refund of preadmission fees in excess of five hundred dollars (\$500) in accordance with all of the following:

(A) A 100-percent refund if preadmission fees were paid within six months of notice of eviction.

(B) A 75-percent refund if preadmission fees were paid more than six months but not more than 12 months before notice of eviction.

(C) A 50-percent refund if preadmission fees were *paid* more than 12 months but not more than 18 months before notice of eviction.

(D) A 25-percent refund if preadmission fees were paid more than 18 months but less than 25 months before notice of eviction.

(2) No preadmission refund is required if preadmission fees were paid 25 months or more ~~from~~ *before* the notice of eviction.

(3) The preadmission refund required by this subdivision shall be paid within 15 days of issuing the eviction notice.

SEC. 2. Section 1569.682 is added to the Health and Safety Code, to read:

1569.682. (a) A licensee of a licensed residential care facility for the elderly shall, prior to transferring a resident of the facility to another facility or to an independent living arrangement as a result of the forfeiture of a license, as described in subdivision (a), (b), or (f) of Section 1569.19 or change ~~of~~ *in the* use of the facility pursuant to the department's regulations, take all reasonable steps to transfer affected residents safely and to minimize possible transfer trauma, and shall, at a minimum, do all of the following:

1 (1) Prepare an evaluation of the relocation needs of each
2 resident, which shall include both of the following:

3 (A) Recommendations on the type of facility that would meet
4 the needs of the resident based on the current service plan.

5 (B) A list of facilities in the area that meet the resident's present
6 needs, taking into consideration the proximity to the resident's
7 responsible person.

8 (2) Provide each resident or the resident's responsible person
9 with a written notice no later than 90 days before the intended
10 eviction. The notice shall include all of the following:

11 (A) The reason for the eviction, with specific facts to permit a
12 determination of the date, place, witnesses, and circumstances
13 concerning the reasons.

14 (B) A copy of the resident's current service plan.

15 (C) The relocation evaluation.

16 (D) A list of licensed residential care facilities for the elderly
17 in the area.

18 (E) A list of referral agencies.

19 (F) The right of the resident or resident's legal representative
20 to contact the department to investigate the reasons given for the
21 eviction pursuant to Section 1569.35.

22 (3) Discuss the relocation evaluation with the resident and his
23 or her legal representative within 30 days of issuing the notice of
24 eviction.

25 (4) Submit a written report of any eviction to the licensing
26 agency within five days.

27 (5) Upon issuing the written notice of eviction, a ~~facility~~ *licensee*
28 shall not accept new residents or enter into new admission
29 agreements.

30 (6) (A) For paid preadmission fees in excess of five hundred
31 dollars (\$500), the resident is entitled to a refund in accordance
32 with all of the following:

33 (i) A 100-percent refund if preadmission fees were paid within
34 six months of notice of eviction.

35 (ii) A 75-percent refund if preadmission fees were paid more
36 than six months but not more than 12 months before notice of
37 eviction.

38 (iii) A 50-percent refund if preadmission fees were paid more
39 than 12 months but not more than 18 months before notice of
40 eviction.

1 (iv) A 25-percent refund if preadmission fees were paid more
2 than 18 months but less than 25 months before notice of eviction.

3 (B) No preadmission refund is required if preadmission fees
4 were paid 25 months or more ~~from~~ *before* the notice of eviction.

5 (C) The preadmission refund required by this paragraph shall
6 be paid within 15 days of issuing the eviction notice. *In lieu of the*
7 *refund, the resident may request that the licensee provide a credit*
8 *toward the resident's monthly fee obligation in an amount equal*
9 *to the preadmission fee refund due.*

10 (7) If the resident gives notice five days before leaving the
11 facility, the licensee shall refund to the resident or his or her legal
12 representative a proportional per diem amount of any prepaid
13 monthly fees at the time the resident leaves the facility and the
14 unit is vacated. Otherwise the licensee shall pay the refund within
15 seven days from the date that the resident leaves the facility and
16 the unit is vacated.

17 (8) Within 10 days of all residents ~~leaving~~ *having left* the facility,
18 the licensee, based on information provided by the resident or
19 resident's legal ~~representatives~~ *representative*, shall submit a final
20 list of names and new locations of all residents to the department
21 and the local ~~ombudsman~~ *ombudsperson* program.

22 (b) If seven or more residents of a residential care facility for
23 the elderly will be transferred as a result of the forfeiture of a
24 license or change in the use of the facility pursuant to subdivision
25 (a), the licensee shall submit a proposed relocation plan to the
26 department for approval. The department shall approve or
27 disapprove the relocation plan, and monitor its implementation,
28 in accordance with the following requirements:

29 (1) Upon submission of the relocation plan, the licensee shall
30 be prohibited from accepting new residents and entering into new
31 admission agreements for new residents.

32 (2) The relocation plan shall meet the requirements described
33 in subdivision (a), and describe the staff available to assist in the
34 transfers.

35 (3) Within 15 working days of receipt, the department shall
36 approve or disapprove the relocation plan prepared pursuant to
37 this subdivision, and, if the department approves the plan, it shall
38 become effective upon the date the department grants its written
39 approval of the plan.

1 (4) If the department disapproves a relocation plan, the licensee
2 may resubmit an amended plan, which the department shall
3 promptly either approve or disapprove, within 10 working days
4 of receipt by the department of the amended plan. If the department
5 fails to approve a relocation plan, it shall inform the facility, in
6 writing, of the reasons for the disapproval of the plan. *If the*
7 *department fails to take action within 30 days of receipt of the*
8 *relocation plan, the plan shall be deemed approved.*

9 (5) Until such time that the department has approved a licensee's
10 relocation plan, the facility shall not issue a notice of transfer or
11 require any resident to transfer.

12 (6) Upon approval by the department, the licensee shall send a
13 copy of the relocation plan to the local ~~ombudsman~~ *ombudsperson*
14 program.

15 (c) (1) If a licensee fails to comply with the requirements of
16 subdivision (a), and if the director determines that it is necessary
17 to protect the residents of a facility from physical or mental abuse,
18 abandonment, or any other substantial threat to health or safety,
19 the department shall take any necessary action to minimize trauma
20 for the residents. The department shall contact any local agency
21 that may have placement or advocacy responsibility for the
22 residents, and shall work with those agencies to locate alternative
23 placement sites, and contact relatives or other persons responsible
24 for the care of these residents. The department ~~shall~~ *may* use
25 physicians and other medical or long-term care professionals
26 deemed appropriate by the department to provide onsite evaluation
27 of the residents and to assist in the transfer of residents.

28 (2) The department's participation in the relocation of residents
29 from a residential care facility for the elderly shall not relieve the
30 licensee of any responsibility under this section. A licensee that
31 fails to comply with the requirements of this section shall be
32 required to reimburse the department for the cost of providing the
33 relocation services. If the licensee fails to provide the relocation
34 services required in subdivisions (a) and (b), and the department
35 is not able to arrange for the provision of those services required
36 by those subdivisions, then the department shall request that the
37 Attorney General's office, the city attorney's office, or the local
38 district attorney's office seek injunctive relief and damages in the
39 same manner as provided for in Chapter 5 (commencing with

1 Section 17200) of Part 2 of Division 7 of the Business and
2 Professions Code.

3 ~~(d) A licensee who fails to comply with the requirements of this~~
4 ~~section shall be liable for the imposition of civil penalties in the~~
5 ~~amount of one hundred dollars (\$100) per resident per day for each~~
6 ~~day that the licensee is in violation of this section, until such time~~
7 ~~that the violation has been corrected.~~

8 *(d) A licensee who fails to comply with requirements of this*
9 *section shall be liable for the imposition of civil penalties in the*
10 *amount of one hundred dollars (\$100) per resident per day for*
11 *each day that the licensee is in violation of this section, until such*
12 *time that the violation has been corrected. The civil penalties shall*
13 *be issued immediately following the written notice of violation.*
14 *However, if the violation does not present an immediate or*
15 *substantial threat to the health or safety of residents and the*
16 *licensee corrects the violation within three days after receiving*
17 *notice of violation, the licensee shall not be liable for payment of*
18 *any civil penalties pursuant to this subdivision related to the*
19 *corrected violation.*

20 (e) A resident of a residential care facility for the elderly covered
21 under this section, may bring a civil action against any person,
22 firm, partnership, or corporation who owns, operates, establishes,
23 manages, conducts, or maintains a residential care facility for the
24 elderly who violates the rights of a resident, as set forth in this
25 section. Any person, firm, partnership, or corporation who owns,
26 operates, establishes, manages, conducts, or maintains a residential
27 care facility for the elderly who violates this section shall be
28 responsible for the acts of the facility's employees and shall be
29 liable for costs and attorney fees. Any such residential care facility
30 for the elderly may also be enjoined from permitting the violation
31 to continue. The remedies specified in this section shall be in
32 addition to any other remedy provided by law.

33 (h) This section does not apply to a licensee that has obtained
34 a certificate of authority to offer continuing care contracts, as
35 defined in paragraph (8) of subdivision (c) of Section 1771.

36 SEC. 3. Section 1569.884 of the Health and Safety Code is
37 amended to read:

38 1569.884. The admission agreement shall include all of the
39 following:

1 (a) A comprehensive description of any items and services
2 provided under a single fee, such as a monthly fee for room, board,
3 and other items and services.

4 (b) A comprehensive description of, and the fee schedule for,
5 all items and services not included in a single fee. In addition, the
6 agreement shall indicate that the resident shall receive a monthly
7 statement itemizing all separate charges incurred by the resident.

8 (c) A facility may assess a separate charge for an item or service
9 only if that separate charge is authorized by the admission
10 agreement. If additional services are available through the facility
11 to be purchased by the resident that were not available at the time
12 the admission agreement was signed, a list of these services and
13 charges shall be provided to the resident or the resident's
14 representative. A statement acknowledging the acceptance or
15 refusal to purchase the additional services shall be signed and dated
16 by the resident or the resident's representative and attached to the
17 admission agreement.

18 (d) An explanation of the use of third-party services within the
19 facility that are related to the resident's service plan, including,
20 but not limited to, ancillary, health, and medical services, how
21 they may be arranged, accessed, and monitored, any restrictions
22 on third-party services, and who is financially responsible for the
23 third-party services.

24 (e) A comprehensive description of billing and payment policies
25 and procedures.

26 (f) The conditions under which rates may be increased pursuant
27 to Section 1569.655.

28 (g) The facility's policy concerning family visits and other
29 communication with residents, pursuant to Section 1569.313.

30 (h) The facility's policy concerning refunds.

31 (i) Conditions under which the agreement may be terminated.

32 (j) An explanation of the facility's responsibility to prepare a
33 relocation evaluation, relocation plan, and to provide notice in the
34 case of an eviction pursuant to Section 1569.682.

35 SEC. 4. Section 1569.886 of the Health and Safety Code is
36 amended to read:

37 1569.886. (a) The admission agreement shall not include any
38 ground for involuntary transfer or eviction of the resident unless
39 those grounds are specifically enumerated under state law or
40 regulation.

1 (b) The admission agreement shall list the justifications for
2 eviction permissible under state law or regulation, exactly as they
3 are worded in the applicable law or regulation.

4 (c) The admission agreement shall include an explanation of
5 the resident's right to notice prior to an involuntary transfer,
6 discharge, or eviction, the process by which the resident may appeal
7 the decision and a description of the relocation assistance offered
8 by the facility.

9 (d) The admission agreement shall state the responsibilities of
10 the licensee and the rights of the resident when a facility evicts
11 residents pursuant to Section 1569.682.

12 SEC. 5. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 the only costs that may be incurred by a local agency or school
15 district will be incurred because this act creates a new crime or
16 infraction, eliminates a crime or infraction, or changes the penalty
17 for a crime or infraction, within the meaning of Section 17556 of
18 the Government Code, or changes the definition of a crime within
19 the meaning of Section 6 of Article XIII B of the California
20 Constitution.